IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH BULLICK,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 03-6395
STERLING INCORPORATED, d/b/a KAY JEWELERS,	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. **OCTOBER 21, 2004**

Plaintiff, Deborah Bullick, brings this action against her former employer, Defendant, Sterling Incorporated, doing business as Kay Jewelers. Plaintiff alleges various instances of sexual harassment and discrimination in violation of Title VII of the Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C. § 2000e et seq. ("Title VII"), and the Pennsylvania Human Relations Act, 43 PA. STAT. ANN. § 951 et seq. ("PHRA"). Presently before this Court is Defendant's Motion to Stay Pending Arbitration based upon an arbitration clause contained in Plaintiff's employment application ("Employment Application"), as well as an Arbitration Agreement ("Arbitration Agreement") signed by Plaintiff. Plaintiff has filed a memorandum arguing that the Arbitration Agreement should not be enforced. For the reasons that follow, Defendant's Motion to Stay will be granted.

I. BACKGROUND

On September 6, 2001, Plaintiff went to Defendant's store, Kay Jewelers located

in the Oxford Valley Mall, seeking employment as a salesperson.[1] While at the store, Plaintiff completed and signed the Employment Application which included a paragraph setting forth an agreement between Plaintiff and Defendant regarding the company's mandatory and binding alternative dispute resolution program. On September 27, 2001, Plaintiff's first day of work, Plaintiff signed the Arbitration Agreement provided by Defendant. Plaintiff was employed as a salesperson from September 27, 2001 until her resignation on March 23, 2002. Plaintiff alleges that her resignation was a constructive discharge as a result of sexual harassment and discrimination.

Plaintiff filed the Complaint in this action on November 24, 2003. Based upon the Employment Application and the Arbitration Agreement signed by Plaintiff, Defendant filed a Motion to Dismiss or, in the Alternative, Motion to Stay Pending Arbitration. I denied Defendant's Motion without prejudice and ordered that the parties conduct limited discovery relative to the issue of the validity of the Arbitration Agreement. By an Order dated April 23, 2004, it was explained to the parties that the denial of Defendant's Motion to Dismiss or, in the Alternative, Motion to Stay Pending Arbitration was not a final decision. In the Order, I explained my intention to consider whether to dismiss the matter or, in the alternative, stay the matter pending arbitration upon the completion of limited discovery regarding the issue of the validity of the Arbitration Agreement.

On May 6, 2004, the parties were given ninety days to conduct their limited

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[1] Plaintiff had been previously employed by Defendant in 1991. Plaintiff's prior employment with Defendant is not at issue and will not be addressed. The only employment which is at issue in the instant action is Plaintiff's employment which commenced in September 2001.

discovery. Upon completion of the limited discovery, the parties were given time to file new briefs regarding the issue of the validity of the arbitration agreement based upon the evidence deduced from the limited discovery. On September 30, 2004, Defendant filed the instant Motion to Stay Pending Arbitration and Plaintiff filed her Brief Contra Enforcement of the Arbitration Agreement. On October 12, 2004, Defendant filed a Reply to Plaintiff's Brief.

II. STANDARD

According to the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("the FAA"),

> [i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved . . . is referable to arbitration . . . shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.[2]

9 U.S.C. § 3. The FAA further provides that "[a] party aggrieved by the alleged . . . refusal of another to arbitrate under a written agreement for arbitration may petition [a] United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." Id. at § 4. "When confronted with a motion to stay proceedings pursuant to 9 U.S.C. § 3, the appropriate standard of review for the district court is that employed in evaluating motions for summary judgment under Federal Rule of Civil Procedure 56(c)." Choice v. Option One Mortgage Corp., No. 02-6626, 2003 WL 22097455, at *3 (E.D. Pa. May 13, 2003)(citations omitted); Berkery v. Cross Country Bank, 256 F. Supp.2d 359, 364 n.3 (E.D. Pa. 2003)

[2] The Arbitration Agreement states as follows: "I [Plaintiff] understand that this Agreement is being made under the provision of the Federal Arbitration Act (9 U.S.C., Section 1-14) and will be construed and governed accordingly." (Arbitration Agreement at 5). Both parties refer to the FAA and, therefore, acknowledge that their dispute falls within its ambit.

("Motions to compel arbitration are evaluated, in the first instance, under the well-settled summary judgment standard set forth in Fed. R. Civ. P. 56(c)."). Thus, "movants must prove through 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, . . . that there is no genuine issue as to any material fact and that [they are] entitled to judgment as a matter of law.'" Berkery, 256 F. Supp.2d at 364 n.3 (quoting FED. R. CIV. P. 56(c)). "The court must consider all of the non-moving party's evidence and construe all reasonable inferences in the light most favorable to the non-moving party." Id. (citations omitted).

III. DISCUSSION

Relying upon Plaintiff's signature on both the Employment Application and the Arbitration Agreement, Defendant contends that the claims in Plaintiff's Complaint are subject to arbitration. According to Defendant, the arbitration clause contained in the Employment Application and the Arbitration Agreement are valid and enforceable, and Plaintiff's claims fall within their scope. Therefore, Defendant contends that this action should be stayed pending arbitration. Plaintiff argues that her case should be permitted to proceed in the United States Court for the Eastern District of Pennsylvania because she did not intend to be bound to arbitrate disputes she had regarding her employment once she ceased being employed by Defendant. Plaintiff asserts that the Arbitration Agreement should not be enforced because it is substantively and procedurally unconscionable. In the event that the Court does not find that the Arbitration Agreement is unconscionable, Plaintiff requests Defendant be equitably estopped from enforcing the Arbitration Agreement.

A. The FAA

"Congress enacted the FAA in 1925 in response to the traditional judicial hostility to the enforcement of arbitration agreements."[3] Alexander v. Anthony Int'l, L.P., 341 F.3d 256, 263 (3d Cir. 2003)(citations omitted). "The FAA provides that such agreements are enforceable to the same extent as other contracts." Id. (citation omitted). "The enactment establishes a strong federal policy in favor of the resolution of disputes through arbitration." Id.; Orcutt v. Kettering Radiologists, Inc., 199 F. Supp.2d 746, 750 (S.D. Ohio 2002). "Accordingly, 'federal law presumptively favors the enforcement of arbitration agreements.'" Alexander, 341 F.3d at 263 (quoting Harris v. Green Tree Fin. Corp., 183 F.3d 173, 178 (3d Cir. 1999)); Orcutt, 199 F. Supp.2d at 750. "A party to a valid and enforceable arbitration agreement is entitled to a stay of federal court proceedings pending arbitration as well as an order compelling such arbitration." Alexander, 341 F.3d at 263 (citations omitted).

Before ordering a reluctant party to arbitrate, "the FAA requires the court to engage in a limited review to ensure that the dispute is arbitrable - i.e., that a valid agreement to arbitrate exists between the parties and that the specific dispute falls within the substantive scope of that agreement." Berkery, 256 F. Supp.2d at 364 (citation omitted); Masco Corp. v. Zurich Am. Ins. Co., 382 F.3d 624, 627 (6th Cir. 2004). Regarding the initial issue of whether a valid arbitration agreement exists under the FAA, "[t]he federal policy encouraging recourse to arbitration requires federal courts to look first to the relevant state law of contracts." Spinetti v.

[3] Which state law is relevant in this action is unclear. The Arbitration Agreement states that "[t]his Agreement shall be governed by and shall be interpreted in accordance with the laws of the state of Ohio." (Arbitration Agreement at 5). In their briefs, the parties rely upon both Ohio and Pennsylvania law. Reliance upon the laws of both states is not problematic because there is no conflict between the laws of Ohio and Pennsylvania regarding the issues in this action.

Serv. Corp. Int'l., 324 F.3d 212, 214 (3d Cir. 2003)(citation omitted); Anderson v. Delta Funding Corp., 316 F. Supp.2d 554, 564 (N.D. Ohio 2004). "Applying the relevant state contract law, a court may also hold that an agreement to arbitrate is unenforceable based on a generally applicable contractual defense, such as unconscionability." Parilla v. IAP Worldwide Servs., VI, Inc., 368 F.3d 269, 276 (3d Cir. 2004)(citations omitted); Anderson, 316 F. Supp.2d at 564. As for the second issue regarding whether the specific dispute falls within the substantive scope of the arbitration agreement, "the court's inquiry is limited to that of ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract." Berkery, 256 F. Supp.2d at 364 (quotation and internal quotation marks omitted). The FAA "mandates that any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Brayman Const. Corp. v. Home Ins. Co., 319 F.3d 622, 625 (3d Cir. 2003)(quotation and internal quotation marks omitted); Masco, 382 F.3d at 627.

B. Analysis of Plaintiff's Claim

1. The Employment Application's Arbitration Clause and the Arbitration Agreement

Guided by a presumption of arbitrability, both the Employment Application's arbitration clause and the Arbitration Agreement are valid. The arbitration clause contained within the Employment Application states as follows:

> **IF EMPLOYED BY THE COMPANY, YOU AND THE COMPANY AGREE TO UTILIZE THE COMPANY'S BINDING AND MANDATORY ALTERNATIVE DISPUTE RESOLUTION PROGRAM TO RESOLVE CERTAIN WORKPLACE DISPUTES. BY SIGNING THIS APPLICATION, AND IN EXCHANGE FOR BEING HIRED BY THE COMPANY, YOU KNOWINGLY AND VOLUNTARILY WAIVE YOUR APPLICABLE**

STATUTORY RIGHTS TO FILE A LAWSUIT AGAINST THE COMPANY FOR A COVERED CLAIM.

(Employment Application at 2). As for the Arbitration Agreement, entitled Resolve Program Alternative Dispute Resolution Arbitration Agreement, the opening paragraph states, in pertinent part, as follows:

> **I hereby agree to utilize the Sterling RESOLVE Program to pursue any dispute, claim, or controversy ("claim") against Sterling** . . . regarding any alleged unlawful act regarding my employment or the termination of my employment which could have otherwise been brought . . . in an appropriate court including, but not limited to, claims under . . . Title VII of the Civil Rights Act of 1964; any state Human Rights/Civil Rights Statutes . . . . **I understand that by signing this Agreement I am waiving my right to obtain any legal or equitable relief (e.g., monetary, injunctive or reinstatement) through any government agency or court, and I am also waiving my right to commence any court action. I may, however, seek and be awarded equal remedy through the RESOLVE Program.**[4]

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[4] The RESOLVE Program is Defendant's binding and mandatory alternative dispute resolution program used to resolve workplace disputes. "RESOLVE is a three step process which serves as the sole means for settling workplace disputes between Sterling and its employees." (Defs.' Mem. Law Supp. Mot. Stay at 4). The RESOLVE Program guidelines brochure, which was available to Plaintiff, provides information, a toll-free telephone number and guidelines regarding the RESOLVE Program. It also provides a step-by-step analysis of asserting a claim under the program. Additionally, the brochure explains that the RESOLVE Program applies to claims including, but not limited to, "[d]iscrimination or harassment on the basis of . . . sex." (The RESOLVE Program Brochure at 6). The "QUESTIONS AND ANSWERS" section of the brochure, which is especially relevant to Plaintiff's claims in this action, provides, in pertinent part, as follows:

> **If my dispute is covered, is it necessary that I use this program?**
> After June 1, 1998, all employees are required to use the program to resolve applicable disputes.
> **If I am terminated, can I use the RESOLVE Program?**
> Yes, but only claims involving alleged unlawful actions are subject to the RESOLVE Program.
> **If I quit because I've been sexually harassed, do I have to use the program?**
> Absolutely. The RESOLVE Program covers harassment.

(Arbitration Agreement at 4). The Arbitration Agreement further states as follows:

> **[i]f for any reason this Agreement is declared unenforceable, I agree to waive any right I may have to a jury trial with respect to any dispute or claim against Sterling relating to my employment, my termination, or any terms and conditions of my employment with Sterling.**

(Id. at 5). Upon reading both the Employment Application's arbitration clause, as well as the pertinent clauses contained within the Arbitration Agreement, it is clear that they encompass Plaintiff's post-termination claims against Defendant based upon Title VII and the PHRA.[5]

2. Validity of the Employment Application's Arbitration Clause and the Arbitration Agreement

a.) State Law Regarding Formation of Contracts

"Before concluding that there is a valid contract under Pennsylvania law, the court must 'look to: (1) whether both parties manifested an intention to be bound by the agreement; (2) whether the terms of the agreement are sufficiently definite to be enforced; and (3) whether there was consideration.'" Blair v. Scott Speciality Gases, 283 F.3d 595, 603 (3d Cir. 2002)(quoting ATACS Corp. v. Trans World Communications, Inc., 155 F.3d 659, 666 (3d Cir. 1998)); see also Nilavar v. Osborn, 127 Ohio App.3d 1, 11, 711 N.E.2d 726, 732 (Ohio App. Ct. 1998)(stating that under Ohio law, "[t]o . . . prove the existence of a contract, the plaintiff must show the elements of mutual assent (generally, offer and acceptance) and consideration"). When forming

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(Id. at 7)(emphasis added). Thus, the clear language contained in the RESOLVE Program guidelines brochure directly informed Plaintiff that her claims against Defendant in the instant action are precisely the workplace disputes that are covered under the RESOLVE Program.

[5] The issue regarding whether Plaintiff's specific dispute falls within the substantive scope of the arbitration agreement will not be addressed because it is undisputed that her claims fall within the Arbitration Agreement's scope. The primary issue, therefore, is whether the Arbitration Agreement is enforceable.

a valid contract, "[a] 'meeting of the minds' occurs when both parties mutually assent to the same thing, as evidenced by the offer and its acceptance." Aircraft Guar. Corp. v. Starto-Lift, Inc., 103 F. Supp. 2d 830, 835 (E.D. Pa. 2000)(citation omitted); Nilavar, 127 Ohio App.3d at 11, 711 N.E.2d at 732 ("The plaintiff must . . . show that there was a 'meeting of the minds' and that the contract was definite as to its essential terms.").

b.) Analysis of State Law Regarding Formation of Contracts

In the instant case, Plaintiff appears to concede that the Arbitration Agreement meets the legal requirements for a contract.[6] Examination of the Arbitration Agreement, along with the Employment Agreement, reveals that both are valid contracts under Pennsylvania and Ohio law. Regarding the formation of the Arbitration Agreement, Plaintiff appears to rely upon the argument that there was not a meeting of the minds because she did not intend to be bound to arbitrate disputes she had regarding her employment after she ceased being employed by Defendant. Despite the clear language contained in the Employment Applications' arbitration clause, the Arbitration Agreement and the RESOLVE Program guidelines brochure (which directly addressed a claim identical to Plaintiff's claim), Plaintiff argues that her understanding of the RESOLVE Program was that it only applied to claims asserted while she was employed by Defendant.

Although Plaintiff argues that she misunderstood the application of the RESOLVE Program, she cannot escape the fact the she voluntarily signed two documents demonstrating her acceptance of Defendant's mandatory and binding arbitration program. There

[6] Plaintiff only addresses the Arbitration Agreement in her Brief Contra Enforcement of the Arbitration Agreement. She does not address the arbitration clause contained within the Employment Application.

is no evidence that Plaintiff was deprived of an opportunity to read the Employment Application or the Arbitration Agreement. Plaintiff freely signed the Employment Application which contained an unambiguous arbitration clause. Plaintiff also admits to voluntarily signing the Arbitration Agreement. Both documents, and the RESOLVE Program guidelines brochure, contained conspicuous and unambiguous language. Besides containing clear language regarding the terms of Defendant's mandatory arbitration program, including language specifically including claims regarding termination of employment, the Arbitration Agreement contained a sentence stating, "I [Plaintiff] understand that a copy of the RESOLVE Program Guidelines and the AAA Employment Dispute Resolution Rules are available for my review." (Arbitration Agreement at 5). As explained earlier, the RESOLVE Program guidelines brochure provided detailed information and assistance regarding the RESOLVE Program and its application to claims concerning an employee's termination. See *supra* note 4. Moreover, the guidelines brochure also directly set forth that the claims upon which Plaintiff bases the instant action are encompassed within the RESOLVE Program. Id.

"Parties cannot be permitted to repudiate their written contracts merely by asserting that they neglected to read them, or did not really mean them." Green v. Shearson Lehman/Am. Express Inc., No 85-1368, 1985 WL 2640, at *1 (E.D. Pa. Sept. 10, 1985)(citing Standard Venetian Blind Co. v. Am. Empire Ins. Co., 503 Pa. 300, 469 A.2d 563 (1983)); Rickard v. Teynor's Homes, Inc., 279 F. Supp.2d 910, 913 (N.D. Ohio 2003)("[A] plaintiff cannot be excused from complying with an arbitration agreement if he or she simply fails to properly read the contract."). Although Plaintiff relies heavily upon the argument that she believed that mandatory arbitration only applied to claims asserted while she was employed by

Defendant, she offers no basis for her belief. Plaintiff makes no allegations of fraud, deceit or misrepresentation by Defendant. At the time of signing both the Employment Application and the Arbitration Agreement, Plaintiff admitted that none of Defendant's representatives discussed or misrepresented their terms. (Pl. Dep. at 33, 96). When questioned by defense counsel about what formed the basis of her belief that arbitration only covered claims while she was employed by Defendant, Plaintiff declared, "I can't tell you why I thought that." (Id. at 102-03, 120). Unable to provide any basis for her position, Plaintiff admitted that no one from Kay Jewelers represented to her that the Arbitration Agreement covered only disputes asserted while she was employed. (Id. at 140-41). Without any misrepresentations or fraud on the part of Defendant or its representatives, Plaintiff explains her understanding that the Arbitration Agreement only applied during her employment by stating that it was "the way that I felt." (Id. at 141). In light of the Agreements' clear terms mandating arbitration of employment claims against Defendant pertaining to employment and termination of employment, any fair reading of the Agreements would have informed Plaintiff that she was required to arbitrate her employment claims against Defendant both during and subsequent to her employment with Defendant. Plaintiff's thoughts and feelings contrary to the unequivocal terms set forth in the Agreements do not authorize repudiation of the Agreements.

Although arguing that she misconstrued the terms of the Arbitration Agreement, Plaintiff admitted that she understood that by affixing her signature to a contract she accepted the terms of the contract. (Id. at 75). The terms contained in the Arbitration Agreement, as well as the arbitration clause in the Employment Agreement, were clear, unambiguous and conspicuous. By signing the Agreements, Plaintiff understood that she necessarily accepted their terms and

conditions. Since there is no ambiguity in either Agreement pertaining to the instances in which submission of claims to arbitration is required, and because Plaintiff knew that her signature on the Agreements was an acceptance of their terms, there is no finding that there was a lack of a meeting of the minds to justify invalidation of the agreements. As such, the arbitration clause contained in the Employment Application, and the Arbitration Agreements, are valid contracts under both Pennsylvania and Ohio law.

3. Plaintiff's Unconscionability Claim

"Unconscionability is a defensive contractual remedy which serves to relieve a party from an unfair contract or from an unfair portion of a contract." Harris v. Green Tree Fin. Corp., 183 F.3d 173, 181 (3d Cir. 1999)(quotation and internal quotation marks omitted). "Under Pennsylvania law, the test for unconscionability is whether one of the parties lacked a meaningful choice about whether to accept the provision [or contract] in question and the challenged provision or contract unreasonably favor[s] the other party to the contract." Zumpano v. Omnipoint Communications, Inc., No. 00-595, 2001 WL 43781, at *5 (E.D. Pa. Jan. 18, 2001)(quotation and internal quotation marks omitted); see also Rickard, 279 F. Supp.2d at 915 (stating the contract defense of unconscionability "is generally recognized to include an absence of meaningful choice on the part of one of the parties to a contract, combined with contract terms that are unreasonably favorable to the other party"). "In evaluating claims of unconscionability, courts generally recognize two categories, procedural, or 'unfair surprise,' unconscionability and substantive unconscionability." Harris, 183 F.3d at 181 (citations omitted); Garrett v. Hooters-Toledo, 295 F. Supp.2d 774, 779 (N.D. Ohio 2003)("The unconscionability doctrine embodies two separate components: (1) substantive unconscionability, i.e., unfair and

unreasonable contract terms, and (2) procedural unconscionability, i.e., individualized circumstances surrounding each of the parties to a contract such that no voluntary meeting of the minds was possible."). "The burden of proof lies with the party who alleges unconscionability." Borden, Inc. v. Advent Ink Co., 701 A.2d 255, 264 (Pa. Super. Ct. 1997); Hurst v. Enter. Title Agency, Inc., 157 Ohio App.3d 133, 141, 809 N.E.2d 689, 695 (Ohio App. Ct. 2004)("To establish unconscionability, the party claiming it must allege and prove both prongs.").

a.) Procedural Unconscionability

In Pennsylvania, "[p]rocedural unconscionability pertains to the process by which an agreement is reached and the form of an agreement, including the use therein of fine print and convoluted or unclear language." Harris, 183 F.3d at 181 (citation omitted); see also Jones v. Asgrow Seed Co., 749 F. Supp. 836, 837-38 (N.D. Ohio 1990)("Procedural unconscionability involves some impropriety during the process of forming the contract depriving a party of meaningful choice."). "This type of unconscionability involves, for example, material, risk-shifting contractual terms which are not typically expected by the party who is being asked to assent to them and often appear[ ] in the boilerplate of a printed form." Harris, 183 F.3d at 181 (quotation and internal quotation marks omitted); Garrett, 295 F. Supp.2d at 779 (stating that Ohio courts, in determining procedural unconscionability, "look to factors bearing on the relative bargaining position of the contracting parties, including their age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, and whether alterations in the printed terms were possible").

Viewing the evidence in the light most favorable to Plaintiff, and with all

reasonable inferences drawn in her favor, the arbitration clause in the Employment Agreement and the Arbitration Agreement are not procedurally unconscionable. Plaintiff does not argue that the Arbitration Agreement's language was unclear or inconspicious. In fact, the language was very clear and the print was prominent, often times even in boldface type. Plaintiff's argument that the Arbitration Agreement is procedurally unconscionable is based, in part, upon her self-titled status as "the weaker party." At the time she signed the Arbitration Agreement, Plaintiff states that she had neither an Associate nor Bachelor degree. Although Plaintiff portrays herself as not possessing a college degree, her deposition testimony reveals that, at the time period in question, she was intermittently attending college.[7] (Pl. Dep. at 72-74). At that time, Plaintiff stated that her last course of study was paralegal studies. (Id. at 74). Plaintiff admitted that she had taken several legal studies classes including a business law class which she believed was considered a general contracts class. (Id. at 74-75). In school, Plaintiff stated that she had learned that the concept of offer, acceptance and consideration creates a contract. (Id. at 75). As mentioned earlier, Plaintiff understood that by affixing her signature on a contract she accepted the terms of that contract. (Id.). In addition to attending legal studies classes, Plaintiff was employed by a couple of law firms prior to her applying for employment with Defendant. (Id. at 90-93). Thus, although Plaintiff was not a college graduate, she was, nonetheless, knowledgeable of contact law on a more sophisticated level than a person without any legal education or experience.

Although Plaintiff owned her own antiques business, she also bases her

[7] In the education section of the Employment Application, Plaintiff wrote that she had not yet obtained her college degree in the study of law. (Employment Application at 1).

procedural unconscionability argument upon the premise that she was not "a business savvy woman." Prior to filling out the Employment Application, Plaintiff had owned her own antiques business consisting of a couple of antiques shops. (Id. at 35). Plaintiff did not like the trends that were falling into place in the antiques industry and voluntarily chose to get out of the business. (Id. at 36). Although owner of the business, Plaintiff was unable to recall much about its dealings, especially in relation to anything of a contractual nature. (Id. at 42). Even though unable to recall specifics, it appears that Plaintiff was very involved in the purchasing sector of the business, and she even created a store on her own. (Id. at 42-43). Whether she was "a business savvy woman" or not, Plaintiff possessed business experience as a result of having owned her own business.[8]

Plaintiff's final argument in support of procedural unconscionability focuses upon the following contentions: the terms of the Arbitration Agreement were not explained to her; the atmosphere was chaotic while she was filling out her new hire paperwork; and Maryann Holt, the then Assistant Manager of the Kay Jewelers store, was dismissive of Plaintiff's new hire paperwork and categorized it as a bunch of legal mumbo jumbo. As mentioned before, the terms of the arbitration clause in the Employment Application, as well as the Arbitration Agreement, were unambiguous and clear. Since the terms were unambiguous and in plain view, they did not require any explanation expounding their meaning. The allegedly chaotic atmosphere in the store

[8] In addition to her lack of a college degree, and her alleged business inexperience, Plaintiff states that the Arbitration Agreement was procedurally unconscionable because she was taking Zoloft, an anti-depressant medication, at the time she signed it. (Pl.'s Br. Contra Enforcement Arbitration Agreement at 4). The Court will not dedicate any discussion to this claim because Plaintiff admitted at her deposition that her taking of Zoloft did not prohibit her from understanding and accepting the terms of both the Employment Application and the Arbitration Agreement. (Pl. Dep. at 130-133).

is inconsequential since there is no contention that such alleged chaos prevented Plaintiff from reading or comprehending the paperwork. Lastly, Maryann Holt's alleged categorization of Plaintiff's new hire packet as "legal mumbo jumbo" does not justify a finding that the Arbitration Agreement was procedurally unconscionable.[9] A fair reading of the Arbitration Agreement clearly explains its terms and their legal ramifications. Moreover, Plaintiff did not believe that the documents in her new hire packet were a bunch of legal mumbo jumbo:

> Q. Did you believe any of the paperwork you were filling out was a bunch of legal mumbo jumbo?
> A. I didn't believe that. [Maryann Holt] said that. I don't believe a legal government document is legal mumbo jumbo.
> Q. Or any of the other documents?
> A. I don't know because I don't really consider them government documents.
> Q. You filled out more than just government documents at that time; is that correct?
> A. Yes.
> Q. Did you believe any of them at that time to be legal mumbo jumbo?
> A. Did I believe them to be legal mumbo jumbo?
> Q. Yes.
> A. No.

(Id. at 80-81)(emphasis added). Thus, Maryann Holt's dismissive categorization of Plaintiff's new hire paperwork did not sway Plaintiff into believing that the documents, including the Arbitration Agreement, were not important. Plaintiff assigned the proper weight to the importance of the paperwork that she signed and did not treat it as legal mumbo jumbo.

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[9] Plaintiff stated that Maryann Holt's mumbo jumbo characterization pertained to the new hire packet paperwork as a whole. (Pl. Dep. at 80). Plaintiff explained that Maryann Holt was referring to all of her documents and "did not say that [the] RESOLVE Program is legal mumbo jumbo." (Id.). Plaintiff also explained that Maryann Holt never specifically referred to the Arbitration Agreement as a bunch of legal mumbo jumbo. (Id. at 140).

Consequently, the categorization of Plaintiff's new hire packet as legal mumbo jumbo did not have any affect on her assigning her acceptance of the terms of the Arbitration Agreement.

In light of the aforementioned, there is no finding of procedural unconscionability under either Pennsylvania or Ohio law. The procedures by which the Arbitration Agreement and the Employment Application were reached were proper. Plaintiff makes no allegations of fraud, deceit or misrepresentation against Defendant. There are no allegations that Plaintiff was prevented from reading the Agreements or that she was forced into signing them against her will. Likewise, the forms of the Agreements, including their use of clear print and unambiguous language, did not create any unfair surprise to Plaintiff. Each party to the Agreements had a reasonable opportunity to understand the terms of the contract. As a competent adult, who possesses knowledge of contract law and has business experience, Plaintiff knowingly bound herself to the arbitration clause contained in the Employment Agreement and the Arbitration Agreement.

b.) Substantive Unconscionability

"Substantive unconscionability refers to contractual terms that are unreasonably or grossly favorable to one side and to which the disfavored party does not assent." Harris, 183 F.3d at 181 (citation omitted); Jones, 749 F. Supp. 838 ("[S]ubstantive unconscionability deals with the terms of the contract itself and whether they are commercially reasonable."). "To establish substantive unconscionability, the plaintiff must show that the contractual terms are unreasonably favorable to the drafter, and that there is no meaningful choice on the part of the other party regarding acceptance of the provisions." Dabney v. Option One Mortg. Corp., No. 00-5831, 2001 WL 410543, at *5 (E.D. Pa. Apr. 19, 2001)(citation omitted); Garrett,

295 F. Supp.2d at 779-80 ("Because the determination of commercial reasonableness varies with the content of the contract terms at issue in any given case, no generally accepted list of factors has been developed for this category of unconscionability.").

Viewing the evidence in the light most favorable to Plaintiff, and with all reasonable inferences drawn in her favor, the arbitration clause in the Employment Agreement and the Arbitration Agreement are not substantively unconscionable. Plaintiff argues that the Arbitration Agreement is substantively unconscionable because the RESOLVE Program makes no mention of Defendant being bound to arbitrate any disputes that it has with an employee. Defendant argues that Plaintiff's argument lacks a rational basis in fact because "[b]oth Sterling and Plaintiff must utilize RESOLVE to settle covered workplace disputes." (Defs.' Reply to Pl.'s Br. Contra Enforcement of Arbitration Agreement at 7-8). Defendant relies upon the pertinent language of the arbitration clause in the Employment Application which states, **"IF EMPLOYED BY THE COMPANY, <u>YOU AND THE COMPANY</u> AGREE TO UTILIZE THE COMPANY'S BINDING AND MANDATORY ALTERNATIVE DISPUTE RESOLUTION PROGRAM."** (Employment Application at 2)(emphasis added). As for the Arbitration Agreement, Defendant points out that the first paragraph of the RESOLVE Program guidelines brochure states, "Sterling is pleased to offer a program designed to assist <u>both the Company and you</u> in resolving workplace understandings, problems and/or disputes." (The RESOLVE Program Brochure at 1)(emphasis added). Since Defendant is bound to arbitrate any disputes that it has with an employee, Plaintiff's argument that the RESOLVE Program is substantially unconscionable on the basis that Defendant is not required to arbitrate its disputes is moot.

Plaintiff also argues that the RESOLVE Program is substantively unconscionable because the RESOLVE Program arbitration rules declare that an arbitrator may not modify Company rules, policies or procedure. Plaintiff does not offer any argument or evidence showing how the requirement that an arbitrator may not alter Company rules, policies or procedures is unreasonably or grossly favorable to Defendant. In fact, the only argument Plaintiff sets forth regarding this claim is that "[t]he rules are unclear what impact the arbitrator's inability to modify Company rules, policies or procedure has on the arbitrator's determination regarding whether the conduct complained of constitutes unlawful activity." (Pl. Br. Contra Enforcement Arbitration Agreement at 5). It is Plaintiff's burden of proof to show unconscionability. Borden, 701 A.2d at 264; Hurst, 157 Ohio App.3d at 141, 809 N.E.2d at 695. Plaintiff cannot rely on unsupported assertions, conclusory allegations, or mere suspicions. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citation omitted). Defendant argues that the requirement that an arbitrator may not alter Company rules, policies or procedures is not commercially unreasonable or outrageous. Defendant also points out that an arbitrator would be required to enforce the Company's rules, policies and procedures against both Defendant and Plaintiff. Without any argument, or evidence, establishing how the requirement that an arbitrator enforce the Company's rules, policies and procedures during arbitration is unfair or commercially unreasonable, Plaintiff fails to show that the Arbitration Agreement is substantively unreasonable.

4. Plaintiff's Equitable Estoppel Claim

As an alternative to her unconscionability argument, Plaintiff asserts that Defendant should be equitably estopped from enforcing the Agreement. "Equitable estoppel is a

doctrine that prevents one from doing an act differently than the manner in which another was induced by word or deed to expect." Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 606, 747 A.2d 358, 361 (2000)(quotation and internal quotation marks omitted); Gen. Elec. Co. v. Advance Stores Co. Inc., 285 F. Supp.2d 1046, 1050 (N.D. Ohio 2003). In Pennsylvania, the elements of equitable estoppel are as follows: "(1) an inducement, whether by act, representation, or silence when one ought to speak, that causes one to believe the existence of certain facts; (2) justifiable reliance on that inducement; and (3) prejudice to the one who relies if the inducer is permitted to deny the existence of such facts." Chem. Bank v. Dippolito, 897 F. Supp. 221, 224 (E.D. Pa. 1995)(citations omitted); see also Heskett v. Paulig, 131 Oh. App.3d 221, 227, 722 N.E.2d 142, 146 (Ohio App. Ct. 1999)(In Ohio, in order to show a *prima facie* case for application of equitable estoppel, a plaintiff is required to show: "(1) the defendant made a factual misrepresentation, (2) that is misleading, (3) that induces actual reliance that is reasonable and in good faith, and (4) that causes detriment to the relying party"). "These elements must be established by the party asserting equitable estoppel by clear, precise and unequivocal evidence." Id. (citations omitted); Hammond v. Klonowski, No. 00–044, 2001 WL 740103, at *7 (Ohio App. Ct. June 29, 2001)("If the evidence regarding the existence of an equitable estoppel is disputed, its existence must be determined by the trier of fact based upon a clear and convincing evidence standard.").

Plaintiff seeks equitable estoppel based upon the argument that she reasonably relied upon Maryann Holt's characterization of her new hire paperwork, which encompassed the Arbitration Agreement, as legal mumbo jumbo. Plaintiff has not proffered any real argument, or evidence, establishing any of the elements required to prove equitable estoppel. Examining the

evidence produced in this action in the manner most favorable to the Plaintiff, and drawing all reasonable inferences in her favor, Plaintiff's equitable estoppel claim fails. As explained earlier, Plaintiff admits that she did not rely upon Maryann Holt's alleged mumbo jumbo characterization when she was filling out her new hire paperwork. See Part III.B.3.a. When specifically questioned, "Did you believe any of [the new hire packet paperwork] at that time to be legal mumbo jumbo?," Plaintiff responded, "No." (Pl. Dep. at 80-81). As evidenced by Plaintiff's own testimony, she did not heed Maryann Holt's characterization, but choose to assign her own measure of significance to the new hire paperwork. Thus, Plaintiff was not induced into signing the Arbitration Agreement due to her reliance upon Maryann Holt's mumbo jumbo characterization. It appears that such characterization did not affect Plaintiff in the least regarding her acceptance of the new hire paperwork, including the clear and unambiguous terms of the Arbitration Agreement. "There can be no equitable estoppel where the complainant's act appears to be . . . the result of his own will or judgment than the product of what the defendant did or represented." Price v. Chevrolet Motor Div. of Gen. Motors Corp., 765 A.2d 800, 808 (Pa. Super. Ct. 2000)(stating that "[e]stoppel cannot be predicated on errors of judgment by person asking the benefit"); Heskett, 131 Oh. App.3d at 227, 722 N.E.2d at 146 ("[E]stoppel cannot arise where the party claiming estoppel is chargeable with knowledge under the relevant facts."). Without showing the essential element of reliance, or any of the other requisite elements, Plaintiff has not established a *prima facie* case of equitable estoppel. As a result, Plaintiff's equitable estoppel claim fails as a matter of law.

IV. CONCLUSION

This Court finds that the arbitration clause contained in the Employment

Agreement, and the Arbitration Agreement, are valid and enforceable between Plaintiff and Defendant. The Arbitration Agreement is subject to the FAA and survives both Plaintiff's unconscionability and equitable estoppel claims. In light of the federal policy favoring arbitration, Defendant's Motion to Stay Pending Arbitration is granted.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH BULLICK,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 03-6395
STERLING INCORPORATED d/b/a KAY JEWELERS,	:	
Defendant.	:	

ORDER

AND NOW, this 21 st day of October, 2004, upon consideration of Defendant's Motion to Stay Pending Arbitration (Doc. No. 29), and the relevant Brief and Reply thereto, it is hereby **ORDERED** that the Motion is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff is **COMPELLED** to submit her claims to **ARBITRATION** according to the terms of the Arbitration Agreement.

BY THE COURT:

Robert F. Kelly, Sr. J.